

BLANK ROME LLP
Todd M. Malynn (SBN 181595)
todd.malynn@blankrome.com
2029 Century Park East | 6th Floor
Los Angeles, CA 90067
Telephone: 424.239.3400
Facsimile: 424.239.3434

Attorneys for Corkcicle LLC
CORKCICLE LLC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CATE BROWN

Plaintiff,

vs.

B R PRINTERS, INC. and CORKCICLE
LLC

Defendants.

Case No. 3:24-cv-01932-CRB

**DEFENDANT CORKCICLE
LLC'S ANSWER TO PLAINTIFF
CATE BROWN'S AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

Judge: Hon. Charles R. Breyer

Defendant Corkcicle LLC ("Defendant" or "Corkcicle") hereby responds to the Amended Complaint filed by plaintiff Cate Brown's ("Plaintiff" or "Brown") and each of the paragraphs therein referenced below as follows:

REPONSE TO INTRODUCTION

1. Corkcicle admits that this action purports to assert a claim for copyright infringement and seeks remedies under the Copyright Act of 1976, Title 17 U.S.C. § 501.

2. Corkcicle admits to Plaintiff taking the *Photograph* but denies the legal conclusion assertion, including because Plaintiff lacks sufficient knowledge or information to admit or deny the remaining allegations, in Paragraph 2.

1 3. Corkcicle lacks sufficient knowledge or information to admit or deny
2 the allegations in Paragraph 3, and on that basis denies them.

3 4. Corkcicle lacks sufficient knowledge or information to admit or deny
4 the allegations in Paragraph 4, and on that basis denies them.

5 5. Corkcicle lacks sufficient knowledge or information to admit or deny
6 the allegations in Paragraph 5, and on that basis denies them.

7 6. Corkcicle lacks sufficient knowledge or information to admit or deny
8 the allegations in Paragraph 6, and on that basis denies them.

9 7. Corkcicle denies the allegations in Paragraph 7.

10 **THE PARTIES**

11 8. Corkcicle lacks sufficient knowledge or information to admit or deny
12 the allegations in Paragraph 9, and on that basis denies them.

13 9. Corkcicle denies the allegations in Paragraph 10, including because
14 Corkcicle lacks sufficient knowledge or information to admit or deny the corporate
15 status or principal place of business of defendant BR Printers;

16 10. Corkcicle denies any liability or responsibility for any wrongdoing
17 alleged in the Amended Complaint; Corkcicle admits that it is a Delaware LLC with
18 a principal place of business in California as alleged in Paragraph 10.

19 **JURISDICTION AND VENUE**

20 11. Corkcicle admits that this Court has subject matter jurisdiction.

21 12. Corkcicle admits that this Court has personal jurisdiction over Corkcicle
22 but denies the remaining allegations in Paragraph 12 as Plaintiff lacks sufficient
23 knowledge or information to admit or deny them.

24 13. Corkcicle admits that venue is proper, but denies any remaining
25 allegations of in Paragraph 13 as Plaintiff lacks sufficient knowledge or information
26 to admit or deny them.

ALLEGED FACTS COMMON TO ALL CLAIMS

A. Plaintiff's Alleged Copyright Ownership

14. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 14, and on that basis denies them.

15. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 15, and on that basis denies them.

16. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 16, and on that basis denies them.

17. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 17, and on that basis denies them.

18. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 18, and on that basis denies them.

19. Corkcicle admits that, for the purpose of obtaining rights to photograph(s) in connection with Corkcicle's Cold Cup XL elevated UGC digital campaign, it hired an agency through which a photographer was employed; Corkcicle denies the remaining allegations in Paragraph 19.

20. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 20, and on that basis denies them.

21. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 21, and on that basis denies them.

22. Corkcicle admits that, for the purpose of obtaining rights to the *Photograph* used in connection with Corkcicle's Cold Cup XL elevated UGC digital campaign, it hired an agency through which a photographer was employed; Corkcicle denies the remaining allegations in Paragraph 22, including any legal conclusions as to which no admission, denial or response is required.

23. Corkcicle denies the allegations in Paragraph 23.

B. Defendants' Alleged Infringing Activity

24. Corkcicle denies the allegations in Paragraph 24.

1 25. Corkcicle admits that it commercially used the Photograph in
2 accordance with the terms of its agreement with the agency that procured Plaintiff's
3 services; Corkcicle denies any remaining allegations in Paragraph 25.

4 26. Corkcicle denies the allegations in Paragraph 26.

5 27. Corkcicle lacks sufficient knowledge or information to admit or deny
6 the allegations in Paragraph 27, and on that basis denies them.

7 28. Corkcicle lacks sufficient knowledge or information to admit or deny
8 the allegations in Paragraph 28, and on that basis denies them.

9 29. Corkcicle lacks sufficient knowledge or information to admit or deny
10 the allegations in Paragraph 29, and on that basis denies them.

11 30. Corkcicle lacks sufficient knowledge or information to admit or deny
12 the allegations in Paragraph 30, and on that basis denies them.

13 31. Corkcicle lacks sufficient knowledge or information to admit or deny
14 the allegations in Paragraph 31, and on that basis denies them.

15 32. Corkcicle lacks sufficient knowledge or information to admit or deny
16 the allegations in Paragraph 32, and on that basis denies them.

17 33. Corkcicle admits that Plaintiff included attachments to the Amended
18 Complaint; Corkcicle lacks sufficient knowledge or information to admit or deny
19 the remaining allegations in Paragraph 33, and on that basis denies them.

20 34. Corkcicle lacks sufficient knowledge or information to admit or deny
21 the allegations in Paragraph 34, and on that basis denies them.

22 35. Corkcicle admits that Plaintiff included attachments to the Amended
23 Complaint; Corkcicle lacks sufficient knowledge or information to admit or deny
24 any remaining allegations in Paragraph 35, and on that basis denies them.

25 36. Corkcicle admits that the Photograph was made available to defendant
26 BR Printers in accordance its agreement with the agency that procured Plaintiff's
27 services; Corkcicle denies any remaining allegations in Paragraph 36.

28 37. Corkcicle denies the allegations in Paragraph 37.

1 38. Corkcicle lacks sufficient knowledge or information to admit or deny
2 the allegations in Paragraph 38, and on that basis denies them.

3 39. Corkcicle denies the allegations in Paragraph 39.

4 40. Corkcicle denies any infringement and lacks sufficient knowledge or
5 information to admit or deny any remaining allegations in Paragraph 40, and on that
6 basis denies them.

7 41. Corkcicle denies any infringement and lacks sufficient knowledge or
8 information to admit or deny any remaining allegations in Paragraph 41, and on that
9 basis denies them.

10 42. Corkcicle lacks sufficient knowledge or information to admit or deny
11 the allegations in Paragraph 42, and on that basis denies them.

12 43. Corkcicle denies the allegations in Paragraph 43.

13 44. Corkcicle denies the allegations in Paragraph 44.

14 45. Corkcicle denies the allegations in Paragraph 45.

15 46. Corkcicle denies the allegations in Paragraph 46.

16 47. Corkcicle denies any infringement and lacks sufficient knowledge or
17 information to admit or deny any remaining allegations in Paragraph 47, and on that
18 basis denies them.

19 48. Corkcicle lacks sufficient knowledge or information to admit or deny
20 the allegations in Paragraph 48, and on that basis denies them.

21 49. Corkcicle denies the allegations in Paragraph 49.

22 50. Corkcicle denies any infringement and lacks sufficient knowledge or
23 information to admit or deny any remaining allegations in Paragraph 50, and on that
24 basis denies them.

25 51. Corkcicle denies any unlawful viewing of the Photograph and lacks
26 sufficient knowledge or information to admit or deny any remaining allegations in
27 Paragraph 51, and on that basis denies them.

52. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 52, and on that basis denies them.

53. Corkcicle denies the allegations in Paragraph 53.

54. Corkcicle denies the allegations in Paragraph 54.

55. Corkcicle denies the allegations in Paragraph 55.

FIRST COUNT

(Direct Copyright Infringement, 17 U.S.C. §501, et seq.)

56. Corkcicle incorporates herein by reference its responses to the preceding paragraphs as though fully set forth herein.

57. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 57, and on that basis denies them.

58. Corkcicle lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 58, and on that basis denies them.

59. Corkcicle denies the allegations in Paragraph 59.

60. Corkcicle denies the allegations in Paragraph 60.

61. Corkcicle denies the allegations in Paragraph 61.

62. Corkcicle denies the allegations in Paragraph 62.

63. Corkcicle denies the allegations in Paragraph 63.

64. Corkcicle denies the allegations in Paragraph 64, including any legal conclusions as to which no admission, denial or response is required.

65. Corkcicle denies the allegations in Paragraph 65.

JURY DEMAND

66. Corkcicle hereby demands a trial of this action by jury.

ANSWER TO PRAYER FOR RELIEF

67. Corkcicle denies each and every averment in the Prayer for Relief and further denies that Brown is entitled to any relief requested in ¶¶(a)-(f).

AFFIRMATIVE DEFENSES

68. Defendant, through undersigned counsel, hereby alleges Affirmative Defenses in response to the Amended Complaint. By asserting these Affirmative Defenses, Defendant in no way assumes and does not waive any burden of proof or persuasion belonging to Plaintiff. Defendants expressly reserve the right to further amend their affirmative defense as facts are discovered and/or developed.

First Affirmative Defense**(Failure to State a Claim)**

Amended Complaint, and the count asserted therein, fails to state a claim upon which relief can be granted.

Second Affirmative Defense**(Invalidity/Lack of Registration)**

Upon information or belief, the Amended Complaint, and the count asserted therein, is barred in whole or in part because the alleged copyright registration is invalid or was not timely procured prior to the alleged infringement.

Third Affirmative Defense**(License)**

Amended Complaint, and the count asserted therein, is barred in whole or in part because Defendant had a valid, enforceable and exclusive worldwide 3-year license covering the use the Photograph as alleged in the Amended Complaint.

Fourth Affirmative Defense**(Good Faith Use)**

Amended Complaint, and the count asserted therein, is barred in whole or in part because Defendant had a good faith belief that it had a valid, enforceable and exclusive worldwide 3-year license covering the use the Photograph, including as alleged in the Amended Complaint, and therefore, there is, was and could be no willful copyright infringement or grounds for any punitive relief.

Fifth Affirmative Defense**(Estoppel)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by the doctrine of estoppel.

Sixth Affirmative Defense**(Waiver)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by the doctrine of waiver.

Seventh Affirmative Defense**(Laches)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by the doctrine of waiver.

Eighth Affirmative Defense**(Unclean Hands)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by the doctrine of unclean hands.

Ninth Affirmative Defense**(Breach of Contract)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by Plaintiff's breach of contract with Plaintiff's agency.

Tenth Affirmative Defense**(Late Registration or Failure to Mitigate Damages)**

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part by Plaintiff's failure to timely file for a copyright registration and/or lack of or failure to mitigate damages.

Eleventh Affirmative Defense

(Third-Party Responsibility)

On information and belief, Amended Complaint, and the count asserted therein, is barred in whole or in part on the ground that Plaintiff's agency is responsible for any wrongdoing alleged by Plaintiff.

DATED: July 9, 2024

BLANK ROME LLP

By: 

Todd M. Malynn

Attorneys for Corkcicle LLC

CERTIFICATE OF SERVICE

The undersigned certifies that on July 9, 2024, the foregoing document was electronically filed with the Clerk of the Court for the United States District Court, Northern District of California, using the Court's Electronic Case Filing (ECF) system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.
Executed on July 9, 2024.

By: /s/AJ Cruickshank

PROOF OF SERVICE

I am over the age of 18 and not a party to the within action; I am employed by BLANK ROME LLP in the County of Los Angeles, California at 2029 Century Park East, 6th Floor, Los Angeles, California 90067.

On July 9, 2024, I served the foregoing document(s) described as:

DEFENDANT CORKCICLE LLC'S ANSWER TO PLAINTIFF CATE BROWN'S AMENDED COMPLAINT

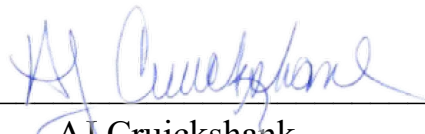
on the interested parties in this action as follows:

Seyamack Kouretchian, Agent for Service
B R Printers, Inc.
1140 S. Coast Highway 101
Encinitas, CA 92024

☒ **BY MAIL:** I am personally and readily familiar with the business practice of Blank Rome LLP for collection and processing of correspondence for mailing with the United States Parcel Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Los Angeles, California.

☒ **FEDERAL** I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on July 9, 2024, at Los Angeles, California.



AJ Cruickshank